heterogeneity that now exists and the introduction of system and order in the organization and arrangement of the courts.

A very lucid and complete description is given of the High Court and its several subdivisions; the Court of Appeal; and the House of Lords in its capacity as a court. Special and local courts such as the Railway and Canal Commission, the Courts of Survey, the ecclesiastical and military courts, the local chancery courts in Lancaster and Durham, the university courts at Oxford and Cambridge, the Court of Passage in Liverpool, all receive full and interesting treatment. Judicial procedure is likewise given considerable attention. The only serious omission is the failure to describe the Judicial Committee of the Privy Council, the importance of which is, to be sure, not so great for purely English as for colonial and imperial interests. Yet we can scarcely conceive how a work of such a comprehensive and exhaustive character should vouchsafe only a passing paragraph to a tribunal of so great importance both past and present. The author's excuse is that the Judicial Committee is not an integral part of the judicial system of England. It has few specifically English functions and these are not important. It is technically not a law court but an arm of the executive administration. Nevertheless we feel that, even though it be at the expense of preserving the logical unity of the work, an adequate discussion of the Judicial Committee ought to have been included.

It is to be sincerely hoped that an early translation of this work into English will make it more generally accessible. It is surely a curious and significant fact that the student of the English judiciary, who has hitherto been compelled to go to de Franqueville's *Système judiciaire de la Grande Bretagne* (1893), an untranslated French work, for the best treatise on the subject, must now resort to Gerland in default of any satisfactory discussion in English.

WALTER JAMES SHEPARD.

Our Judicial Oligarchy. By GILBERT E. ROE. With introduction by Robert M. La Follette. (New York: B. W. Huebsch. 1912. Pp. vii, 239.)

In this little book Mr. Roe offers us a sympathetic review of the reasons "why the people distrust the courts." One reason, in his language, is the following: "The courts having seized the power to declare some statutes invalid because unconstitutional, have come to

declare other statutes invalid merely because the judges disapprove the policy of such legislation." And what is the result of such practice on the part of the courts? Mr. Roe answers thus (p. 178): "In the conflict between the people and the beneficiaries of special privilege, the courts have, according to popular belief, at least, ranged themselves on the side of the latter." The fault to be found with this sort of criticism is the fact that it represents the consequence of an act as inevitably furnishing its motive. Still it must be admitted that the courts have developed the modern silly and illogical doctrine of "due process of law" in the face of very powerful criticism by their own members. The remedy that Mr. Roe suggests is the freest sort of criticism of the courts and, if that proves unavailing, the recall of judges. The so-called "recall of judicial decisions" he condemns and in so doing falls into inconsistency; for on p. 219 he says: "The recall of judicial decisions means that the wholly untrained layman shall undertake to do, personally, the highly specialized and technical work of a judge"; but on p. 226 he writes thus: "It should not take a lawyer to determine in a given case whether two plainly written provisions of law—one a constitution, the other a statute—conflict or not, and if the question of whether there is conflict is so doubtful that judges divide almost equally upon it, the people have a right to believe that it is not the Constitution, but the preconceived notions of the judges with which the statue conflicts." Also, it is inconsistent for Mr. Roe to condemn (p. 171) Chief Justice Marshall for refusing in *Fletcher* v. *Peck* to enter upon the question whether some of the legislation under review in that case was procured by fraud. Had Marshall held otherwise, the courts would indeed possess an indefinite power in dealing with statutes. It is, of course, an error to say that the constitutional decision in *Marbury* v. *Madison* "was not necessary to the decision of the case." The *obiter dictum* portion of Marshall's opinion in *Marbury* v. *Madison* was the expression with reference to the duty of defendant in the premises. It is also erroneous to speak of this decision as "usurpation." Mr. Roe's complaint against the judges is that they don't think the way the rest of society does, which is more or less true. But, there was never a decision handed down by any court more in harmony with the popular view of the matter dealt with than Marshall's decision in *Marbury* v. *Madison*. Even Thomas Jefferson accepted it without demur, though girding bitterly at the *obiter dictum*.

E. S. CORWIN.